

# HARKINS CUNNINGHAM

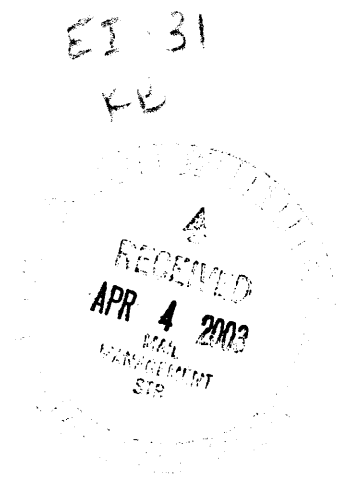
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March 21, 2003



## **BY HAND**

Ms. Victoria J. Rutson, Chief  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W., Room 504  
Washington, DC 20423-0001

**Re: *Sunflower Rail Company, LLC – Construction and Operation Exemption – Finney County, Kansas, STB Finance Docket No. 34210***

Dear Ms. Rutson:

Sunflower Rail Company, LLC ("SRC"), ICF, Incorporated ("ICF"), and the Surface Transportation Board's Section of Environmental Analysis ("SEA") have entered into a Memorandum of Understanding ("MOU") regarding the use of ICF as the third-party consultant, for preparation of environmental documentation in connection with the rail construction that is the subject of the above-referenced docket. Under 49 C.F.R. § 1105.10(d), the requirement that an environmental report and historic report be filed with or before the filing of a petition for exemption is waived when a party hires a third-party consultant for SEA's use to assist it in preparing the necessary environmental documentation. Instead, pursuant to the MOU, ICF will work under SEA's supervision to prepare the environmental documentation required in connection with SRC's construction proposal. I am writing on behalf of SRC to request SEA's agreement to a process, which I have discussed with you and your staff and which is described more fully below, that SRC hopes will expedite the preparation of the environmental documentation for this proposed construction.

SRC proposes that, with SEA's guidance, it prepare a preliminary draft environmental assessment ("PDEA") regarding its proposed construction project, to serve as the basis for the environmental documentation to be prepared by SEA. Preparation of such a PDEA would be consistent with regulations of the Council on Environmental Quality ("CEQ"), 40 C.F.R.

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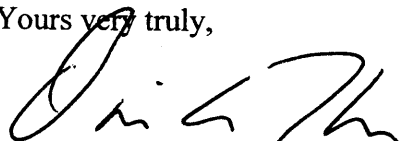
§ 1506.5(b), which specifically contemplate preparation of an environmental assessment ("EA") by an applicant. SRC anticipates that SEA (with the assistance of ICF) would verify the information submitted in the PDEA and independently evaluate the environmental impacts of the proposed project. It would be SRC's objective, in preparing the PDEA, to submit a document of such quality, accuracy, and conformity to SEA's own requirements that SEA's independent verification and evaluation would confirm that the PDEA could be adopted, with a minimum of revision, as SEA's own EA.

We understand that any work on a PDEA performed by SRC would be subject to the possibility that SEA might subsequently decide, in its sole discretion, that an environmental impact statement is appropriate in this case or that it would otherwise be inappropriate to base the environmental documentation in this case on a PDEA or similar document prepared by SRC. We understand that, should SEA make such a decision, SEA will so inform SRC and ICF, and that SEA and SRC will confer and determine whether it appears that ICF will have the resources available to perform in a timely and expeditious manner the additional work that would be required of it in the absence of a PDEA or similar document prepared by SRC. If it is determined that ICF will have the necessary available resources, SRC understands that the parties will amend the Work Plan provided for in Section VI of the MOU as necessary to describe the additional work to be performed by ICF. Should it be determined that ICF does not have the available resources, SRC understands that SEA will not object to the termination of the MOU, and to the replacement by SEA of ICF with another qualified third-party contractor as soon as practicable.

We further understand that the initial draft Work Plan provided for in Section VI of the MOU should generally provide for SRC's preparation and submission of a PDEA, recognizing, however, that certain portions of that work may, with our joint approval, be allocated to ICF.

Please let me know if the approach set forth in this letter conforms with your understanding, and if we may proceed to work, consistent with that approach and in consultation with your office and ICF, on a PDEA regarding SRC's proposal. I look forward to working together on this environmental review project.

Yours very truly,



David A. Hirsh

Counsel for Sunflower Rail Company, LLC